THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.No.6047 of 2006

Dt.27.3.2006

Between:

K.Pandari … Petitioner

And

The Executive Engineer,

Panchayati Raj Division, Nirmal,

Adilabad District and others.

…Respondents

ORDER:

Petitioner questions the action of the 2nd respondent in terminating the petitioner's contract, vide his orders in Lr.No.AEE3/AMP-2004-05/CNADB-13, dt.24.1.2006 as illegal and arbitrary.

The petitioner was awarded a contract in respect of work of packing CNADB-13 (Maintenance of 35 Rural Roads) in Mudhole Sub-

Division of Adilabad District vide agreement No.69/SE/2004-05 dated 21.2.2005. The value of the contract was estimated at Rs.97,37,401/-, but the petitioner has offered at 22.5% less than the estimated value and accordingly the contract was awarded to the petitioner for Rs.75,46,485.78 ps., and the duration of the contract was 12 months. The petitioner has given the performance security of Rs.2,60,000/- through Bank guarantee dated 21.2.2005 in favour of the 2nd respondent which is valid upto 21.3.2007. While so, the Superintendent Engineer, P.R.Circle, Adilabad, by the impugned letter dated 24.1.2006 terminated the aforesaid contract in terms of clause 59.2 (a) & (e) of the conditions of contract and requested the petitioner to stop the works immediately and make the site safe and secure leave the site within seven days in terms of clause mentioned at 59.5 & 61.1 of the conditions of contract. While terminating the said contract the deposits of this package are forfeited with the department account in terms of PWD Code Cl.60(A) of PS to APSS. The petitioner is further requested to contact the Executive Engineer, PR Nirmal for payment upon termination as per clause mentioned at 60.1 of conditions of contract. Final notice was issued to the petitioner by the 2nd respondent vide letter dated 27.12.2005 stating that the rate of progress achieved by the petitioner is very poor and as per clause No.17.28 of agreement by the end of 5th month 80% of periodic maintenance should have been completed and milestone 5 should be achieved, but even after lapse of 10 month MS 5 has not been achieved. It is further stated that as per clause No.17.28 of agreement within 11 months of agreement period all the periodic maintenance should be completed. The Executive Engineer, PR Nirmal by letter dated 3.12.2005 informed that the petitioner has not started BT re-sheeting in spite of repeated instructions and therefore the petitioner was requested to explain why action should not be initiated for causing fundamental breach of contract. It is stated that the petitioner has not at all filed any explanation to the aforesaid letter dated 3.12.2005. As there was no other alternative remedy, the 2nd respondent terminated the said contract of the petitioner.

The learned counsel for the petitioner submits that there similar situated other contracts in the District, but no action has been taken against them, but pursuant to the letter addressed by the M.L.A on 22.1.2006, action has been taken against the petitioner only. It is stated that after termination of the contract alone the petitioner has made a representation on 31.1.2006, which is of no avail. The learned counsel further submits that the petitioner addressed a letter dated 1.12.2005 to the first respondent to permit him to take up B.T. work with Mini Hot Mix plant without paver instead of Plant Mixed, hot laid, paver finished 20 mm mixture, but the said request has been rejected on the ground that it is against the contract agreement.

Heard the learned counsel for the petitioner and the learned Government Pleader on behalf of the respondents.

I am of the opinion that the rejection of the said request by the first respondent cannot be said as illegal and contrary to the conditions of the agreement. Mere mention of the representation made by the Peoples' Representative in the order of termination cannot be a ground to constitute discrimination against the petitioner in terminating the contract. Under clause 59.2 (a) and (e) of the conditions of contract the 2nd respondent is empowered to terminate the contract if the contractor stopped the work for 28 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Engineer. If the Engineer gives notice that failure to correct a particular defect is a fundamental breach of contract and the contractor fails to correct it within a reasonable period of time determined by the Engineer, the contract is liable to be terminated. In the instant case, admittedly, the petitioner has not adhered to the milestone stipulated in the contract. Even after 10 months, the milestone determined to be achieved is not achieved by the petitioner. Even according to the petitioner, by the end of the contract period he has completed 78% of work only. Therefore, there is no violation of the terms and conditions of the agreement. Several hardships have been shown contending that due to heavy rains upto October, 2005 the work could not be progressed and thereafter there

is steep hike in the crude oil and therefore it became not viable to complete the work.

I am not inclined to express any opinion with regard to the said contentions. All such disputes are liable to be resolved as per Clause 5 of the special conditions of contract. Clause 24 of the conditions of contract of deals with disputes and Clause 25 deals with procedure for disputes. As per Clause 5 of the special conditions of contract only in respect of disputes above Rs.50,000/- have to be settled by a civil court of competent jurisdiction by way of Civil Suit. In view of the affective alternative remedy available to the petitioner, I am not inclined to entertain the writ petition. The termination of the contract of the petitioner is legal or illegal can also be decided by way of arbitration in a Civil Suit.

In view of the aforesaid facts and circumstances of the case, the writ petition is dismissed. No order as to costs.

V.ESWARAIAH, J.

27.3.2006

Note: Issue copy within three days

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